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April 6, 2006

The Honorable Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036-4505

Dear Mr. Bloch:

I write to ask that the Office of Special Counsel ("OSC") investigate whether the Hatch Act was violated when EPA Administrator Stephen L. Johnson's title was used in connection with a March 9 fundraising event for Rick O'Donnell, a Republican congressional candidate in Denver, Colorado. The Hatch Act prohibits federal employees from using their titles and from soliciting political participation from entities with business before their agency. The potential violations of the Act could lead one to draw an inference that a political campaign was attempting to provide access to a government official for donors whose businesses are regulated by that official.

Hatch Act Prohibitions on Use of Government Titles in Political Fundraising

As you undoubtedly are aware, the Hatch Act was designed to ensure against improper coordination between official government acts and partisan elections. To further this goal, the Hatch Act first contains prohibitions on the use of government titles during fundraising activities. For instance, no federal employee may "use his official authority or influence for the purpose of interfering with or affecting the result of an election."¹ The government has elucidated this prohibition through regulations that state no employee may use "his or her official title while participating in political activity."² Also, an employee "may not knowingly allow his or her official title to be used in connection with fundraising activities."³

¹ 5 U.S.C. § 7323(a)(1).

² 5 C.F.R. § 734.302(b)(1).

³ *Id.* § 734.303(c).

In this case, it appears that Mr. Johnson's title was used in connection with fundraising. Supporters of Mr. O'Donnell sent e-mails inviting potential donors to a fundraiser for him.⁴ The subject line of the e-mail stated, "Fundraiser with Administrator of EPA Stephen L. Johnson for Rick O'Donnell this Thursday."⁵ The title of the invitation, itself, was "Fundraiser with Administrator of EPA."⁶ While it has been reported that Mr. Johnson never approved the e-mails,⁷ I would appreciate your independent review of the circumstances under which the invitations were sent.

Hatch Act Prohibitions on Political Solicitation by Government Employees

It also may be possible that Mr. Johnson violated federal prohibitions on solicitation of political contributions or participation. A ban on knowingly soliciting contributions applies unless the person being solicited is in the same labor union with the employee.⁸ Similarly, it is illegal to solicit knowingly the political participation of any person who "has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee."⁹

With respect to the O'Donnell event, it has been disclosed that many of the attendees were representatives of industries regulated by the EPA.¹⁰ For instance, the guest list included: five attorneys at a law firm that represents clients who use or lobby the EPA; Chris Neuman of the Colorado Air Quality Control Association; Stan Dempsey, President of the Colorado Petroleum Association; Stuart Sanderson, President of the Colorado Mining Association; and

⁴Chris Barge, *EPA Chief's Visit Questioned*, ROCKY MOUNTAIN NEWS, Mar. 10, 2006, at 6A.

⁵*Id.*

⁶*Id.*

⁷Karen E. Crummy, *EPA Chief, Oil Reps Mingled*, DENVER POST, Mar. 29, 2006, at A1.

⁸5 U.S.C. § 7323(a)(2).

⁹*Id.* § 7323(a)(4)(A). *See also* 5 C.F.R. § 734.305(a) ("An employee may not knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employee's employing office.").

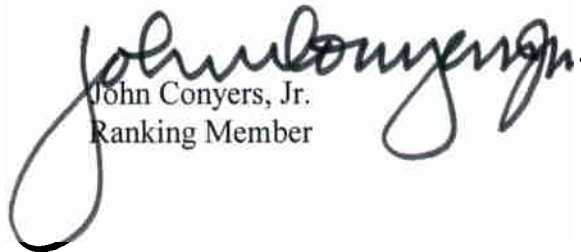
¹⁰Karen E. Crummy, *EPA Chief, Oil Reps Mingled*, DENVER POST, Mar. 29, 2006, at A1.

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Craig Richardson of El Paso Gas.¹¹ While an EPA spokesperson has denied that the EPA reviewed the list of attendees prior to the fundraiser, the O'Donnell campaign has stated that it did send the list to the EPA for review of possible conflicts.¹² The lack of clarity is even more troubling considering that just eight days prior to the event, Mr. Johnson announced the EPA's plan for new standards designed to cut toxic emissions.¹³

I believe there are many disturbing aspects surrounding the fundraising event that warrant review. I would appreciate your prompt response as to whether you will investigate Mr. Johnson's potentially official involvement at a political event and, if not, the reason for your decision. Please reply through the Judiciary Committee Democratic office, 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,



John Conyers, Jr.
Ranking Member

¹¹*EPA Chief Created Conflict of Interest at a Recent Fundraiser in Denver*, editorial, DENVER POST, Mar. 30, 2006, at B6.

¹²Karen E. Crummy, *Campaign Event List not Vetted*, DENVER POST, Mar. 16, 2006, at B1.

¹³EPA, *EPA to Cut Toxic Emissions from Gasoline, Vehicles, and Portable Gas Containers* (Mar. 1, 2006) (press release).